



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.09.2020
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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (MD) .No.705 of 2020 (NPD)
and
C.M.P (MD) .No.4707 of 2020

Balasubramanian ... Petitioner/2nd Respondent/2nd Defendant

Vs.

1.Swami Agilandha
Madathipathy (Abbot) of Sri Paulchamy Madam &
Sri Sankaraswamy Madam,
Vadakkuvasal,
Thanjavur District. ... 1st Respondent/Petitioner/Plaintiff

2.Sri Swami Athmanantha,
Sri Saratha Nikethan Arts and Science College,
Kanavoipudur,
Omaloor Taluk,
Salem District. ... 2nd Respondent/1st Respondent/1st Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to fair and decreetal order passed by the learned II Additional District and District Sessions Judge, Thanjavur, in I.A.No.85 of 2019 in O.S.No.135 of 2019 dated 21.01.2020 and set aside the same.

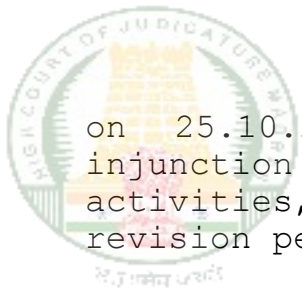
For Petitioner : Mr.A.Balakrishnan

O R D E R

This Civil Revision Petition is directed against the order of the learned II Additional District and Sessions Judge, Thanjavur, in I.A.No.85 of 2019 in O.S.No.135 of 2019, dated 21.01.2020.

2.Heard the learned counsel appearing for the petitioner and perused the materials on record.

3.The revision petitioner is the second defendant in the suit in O.S.No.135 of 2019. The first respondent, in the civil revision petition, filed the said suit for declaration and for consequential injunction in respect of the suit property. The declaratory relief sought for in the suit is for a declaration that the sale deed executed by the first defendant in favour of the revision petitioner



on 25.10.2006 is illegal and *non-est* and for consequential injunction restraining the revision petitioner from indulging in any activities, in respect of the suit property and restraining the revision petitioner from creating any encumbrance.

4. During the pendency of the suit, the plaintiff viz., the first respondent herein filed an interlocutory application in I.A.No.85 of 2019 for appointment of an Advocate Commissioner to note down the physical features of the suit property. In the said application, the grievance expressed by the plaintiff was that, the revision petitioner is making an attempt to change the physical features of the property. It is specifically stated that the revision petitioner contended as if he had put up constructions and developments out of the funds of the first defendant and that there was no such development in the property. Therefore, the purpose for appointment of an Advocate Commissioner, was to find out that there was no such construction or development as it was alleged by the revision petitioner. Therefore, the lower Court, after finding that the appointment of an Advocate Commissioner to note down the physical features is essential, allowed the application. Aggrieved by the same, the above Civil Revision Petition is filed by the second defendant in the suit.

5. The learned counsel appearing for the revision petitioner submitted that the application for appointment of an Advocate Commissioner is not necessary and that the first respondent/plaintiff wants to collect evidence by way of filing the application for appointment of an Advocate Commissioner and the same is without any bonafide.

6. This Court is unable to find out any error or irregularity in the order of the lower Court. Further, with regard to the nature of the dispute and the reasons stated by the first respondent as endorsed by the lower Court, this Court is of the view that the application for appointment of an Advocate Commissioner is necessary, proper and relevant. No prejudice is likely to be caused to the revision petitioner, on account of the appointment of an Advocate Commissioner by noting down the physical features.

7. In the said circumstances, this Court finds no merit in the Civil Revision Petition. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purpose, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The II Additional District and
District Sessions Judge,
Thanjavur.

C.R.P (MD) .No.705 of 2020 (NPD)

and

C.M.P (MD) .No.4707 of 2020

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